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13 Attorneys for Respondent  
14 DEPARTMENT OF VETERANS AFFAIRS

15 UNITED STATES DISTRICT COURT  
16 NORTHERN DISTRICT OF CALIFORNIA  
17 SAN FRANCISCO DIVISION

18 DENNIS BECKLEY, M.D.,

19 Petitioner,

20 v.

21 DEPARTMENT OF VETERANS AFFAIRS,

22 Respondent.  
23

Docket No. C 12-6139 MEJ

**STIPULATION AND AGREEMENT OF  
COMPROMISE AND SETTLEMENT;  
~~PROPOSED~~ ORDER; EXHIBIT "A"**

**STIPULATION AND AGREEMENT OF  
COMPROMISE AND SETTLEMENT; ~~PROPOSED~~ ORDER**

IT IS HEREBY STIPULATED by and between the parties, after full and open discussion, that this action be settled and compromised on the following terms:

WHEREAS, Petitioner Dennis Beckley, M.D. ("Petitioner"), filed the above-captioned action under 38 U.S.C. § 7462(f)(1) seeking judicial review of the February 1, 2012, Order by the Principal Deputy Under Secretary for Health sustaining the decision of the Disciplinary Appeals Board of the Department of Veterans Affairs to discharge Petitioner from federal service;

WHEREAS, Petitioner and Respondent Department of Veterans Affairs ("Respondent") wish to avoid any further litigation and controversy and to settle and compromise fully any and all claims and issues that have been raised, or could have been raised, arising out of Petitioner's employment with Respondent, which have transpired prior to the execution of this Agreement;

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement, and other good and valuable consideration, receipt of which is hereby acknowledged, the Parties agree as follows:

1. **Settlement Amount.** In full and final settlement of all claims in connection with the above-captioned action, Respondent shall pay Petitioner a total sum of forty-three thousand dollars and zero cents (\$43,000.00) ("Settlement Amount"). There shall be no withholding from this amount. Petitioner understands that this payment will be reported to the Internal Revenue Service ("IRS"), and that any questions as to the tax liability, if any, as a result of this payment is a matter solely between Petitioner and the IRS. The check will be made payable to "Dennis Beckley, M.D." and will be mailed to Petitioner in care of his counsel. Petitioner and his attorney have been informed that payment of the Settlement Amount may take sixty (60) days or more from the date that the Court "so orders" this Agreement to process.

2. **Release.** In consideration of the payment of the Settlement Amount and the other terms set forth in this Stipulation and Agreement, Petitioner hereby releases and forever discharges Respondent and any and all of its past and present officials, agents, employees, attorneys, insurers, their successors and assigns, from any and all obligations, damages, liabilities, actions, causes of

actions, claims and demands of any kind and nature whatsoever, whether suspected or unsuspected, at law or in equity, known or unknown, or omitted prior to the date he executes this Agreement, which arise from or relate to his employment with the Department of Veterans Affairs.

3. **Attorneys' Fees.** The parties agree that the Settlement Amount is in full satisfaction of all claims for attorneys' fees and costs arising from work performed by Petitioner's counsel at all stages of litigation, including, but not limited to, the processing of Petitioner's administrative complaint and Petitioner's Ninth Circuit and district court petitions in connection with the above-captioned action, and any other administrative proceedings which are currently pending.

4. **Dismissal.** In consideration of the payment of the Settlement Amount and the other terms of this Stipulation and Agreement, Petitioner agrees that he will immediately upon execution of this Agreement also execute the Stipulation of Dismissal with Prejudice; [Proposed] Order which is attached hereto as Exhibit "A". The fully executed Stipulation of Dismissal with Prejudice; [Proposed] Order will be held by counsel for Respondent and will be filed with the Court upon receipt by Petitioner's counsel of the Settlement Amount and a copy of Petitioner's revised Standard Form 50.

5. **Waiver of California Civil Code § 1542.** The provisions of California Civil Code Section 1542 are set forth below:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

Petitioner has been apprised of the statutory language of Civil Code Section 1542 by his attorneys, and fully understanding the same, nevertheless elects to waive the benefits of any and all rights he may have pursuant to the provision of that statute and any similar provision of federal law.

Petitioner understands that, if the facts concerning Petitioner's claims and the liability of the government for damages pertaining thereto are found hereinafter to be other than or different from the facts now believed by them to be true, this Agreement shall be and remain effective notwithstanding such material difference.

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1       6. **Agreement as a Complete Defense.** This Agreement may be pleaded as a full and  
2 complete defense to any subsequent action or other proceeding involving any person or party which  
3 arises out of the claims released and discharged by the Agreement.

4       7. **No Admission of Liability.** This is a compromise settlement of a disputed claim and  
5 demand, which settlement does not constitute an admission of liability or fault on the part of  
6 Respondent or any of its past and present officials, agents, employees, attorneys, or insurers on  
7 account of the events described in Petitioner's petition in this action.

8       8. **Tax Liability.** If any withholding or income tax liability is imposed upon Petitioner or  
9 Petitioner's counsel based on payment of the settlement sum received herein, Petitioner or  
10 Petitioner's counsel shall be solely responsible for paying any such determined liability from any  
11 government agency thereof.

12       9. **Enforcement Sole Remedy.** The parties agree that should any dispute arise with respect  
13 to the implementation of the terms of this Agreement, Petitioner shall not seek to rescind the  
14 Agreement and pursue his original petition. Petitioner's sole remedy in such a dispute is an action to  
15 enforce the Agreement in the United States District Court for the Northern District of California.

16       10. **Construction.** Each party hereby stipulates that it has been represented by and has  
17 relied upon independent counsel in the negotiations for the preparation of this Agreement, that it has  
18 had the contents of the Agreement fully explained to it by such counsel, and is fully aware of and  
19 understands all of the terms of the Agreement and the legal consequences thereof. For purposes of  
20 construction, this Agreement shall be deemed to have been drafted by all Parties to this Agreement  
21 and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

22       11. **Severability.** If any provision of this Agreement shall be invalid, illegal, or  
23 unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any  
24 way be affected or impaired thereby.

25       12. **Integration.** This instrument shall constitute the entire Agreement between the parties,  
26 and it is expressly understood and agreed that the Agreement has been freely and voluntarily entered  
27 into by the parties hereto with the advice of counsel, who have explained the legal effect of this  
28 Agreement. The parties further acknowledge that no warranties or representations have been made

on any subject other than as set forth in this Agreement. This Agreement may not be altered, modified or otherwise changed in any respect except by writing, duly executed by all of the parties or their authorized representatives.

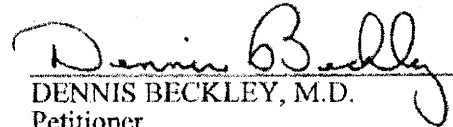
13. Authority. The signatories to this Agreement have actual authority to bind the parties.

14. Expungement of Personnel Records. In addition to the terms described in paragraph 1 above, Respondent agrees to the following:

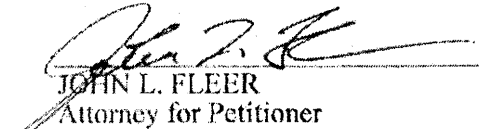
(A) Respondent shall expunge from Petitioner's Official Personnel Folder ("OPF") all records of his removal, and replace such records with a Standard Form 50 reflecting that Petitioner retired effective August 12, 2011.

(B) Petitioner and Respondent will cooperate in notifying the Medical Board of California and the National Practitioner Data Bank of Petitioner's retirement in lieu of removal.

DATED: 5/23/13


  
DENNIS BECKLEY, M.D.  
Petitioner

DATED: 5-23-13

  
JOHN L. FLEER  
Attorney for Petitioner

MELINDA HAAG  
United States Attorney

DATED: 5/23/13

  
NEILL T. TSENG  
Assistant United States Attorney  
Attorneys for Respondent

DATED: 5/23/13

  
COLEEN WELCH  
VA Staff Attorney

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: May 23, 2013

  
HON. MARIA-ELENA JAMES  
United States Magistrate Judge

# Exhibit “A”

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**STIPULATION OF DISMISSAL WITH  
PREJUDICE; [PROPOSED] ORDER**



**STIPULATION OF DISMISSAL WITH PREJUDICE; [PROPOSED] ORDER**

Pursuant to Federal Rule of Civil Procedure 41(a), Petitioner Dennis Beckley, M.D., and Respondent Department of Veterans Affairs hereby stipulate to dismiss with prejudice the above-captioned action. Each party will bear its own costs and attorneys' fees.

DATED:

\_\_\_\_\_  
DENNIS BECKLEY, M.D.  
Petitioner

DATED:

\_\_\_\_\_  
JOHN L. FLEER  
Attorney for Petitioner

MELINDA HAAG  
United States Attorney

DATED:

\_\_\_\_\_  
NEILL T. TSENG  
Assistant United States Attorney  
Attorneys for Respondent

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED:

\_\_\_\_\_  
HON. MARIA-ELENA JAMES  
United States Magistrate Judge